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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/838,805 | 04/20/2001 | David A. Hughes | SNY-P4352 | 3515 |
| 24337 | 7590 | 06/04/2004 | EXAMINER | |
| MILLER PATENT SERVICES 2500 DOCKERY LANE RALEIGH, NC 27606 | | | JAKETIC, BRYAN J | |
| | | ART UNIT | | PAPER NUMBER |
| | | 3627 | | |

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/838,805 | HUGHES ET AL. |
| | Examiner | Art Unit |
| | Bryan Jaketic | 3627 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 April 2004.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,5-9,11 and 28-37 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,2,5-9,11 and 28-37 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>4/16/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on 13 April 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 20 April 2021 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 2, 5-9, 11, and 28-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fritsch in view of kang. Fritsch discloses a method of purchasing electronic entertainment content comprising: receiving an electronic sample of the content comprising a link to a source of streaming music, receiving a link to a source of purchase of the complete copy, using the link to connect the source of purchase, and purchasing the complete copy (see col. 4, line 47 through col. 5, line 9). The link to the source of purchase is a link to a web site, and it is therefore inherent that the link comprises a URL. Fritsch teaches that the music is delivered immediately over the Internet (see col. 4, lines 1-9). It is therefore inherent that an electronic file transfer occurs.

Fritsch does not teach the steps of attaching a sample to an email message or crediting an affinity credit to the sender. Kang teaches the step of distributing an electronic music sample as an email attachment (see p.2, paragraph 29) and the step of crediting an affinity credit to the sender (see paragraph 30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the teachings of kang with the invention of Fritsch to send electronic music sample attachments via email and credit senders in order to provide rapid and wide distribution of the content.

Fritsch does not teach that the file contains a compressed content sample. However, it is common in the art to compress files and it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a compressed file with the invention of Fritsch to allow for easier transfer of the file.

Response to Arguments

4. Applicant's arguments filed 13 April 2004 have been fully considered but they are not persuasive. Applicant argues that Fritsch does not teach the step of receiving an electronic sample of the entertainment content as an attachment to an email message from a sender. Examiner concedes that Fritsch does not contain this teaching. However, kang teaches the step of sending an electronic music sample as an email attachment (see p. 2, paragraph 29). Examiner maintains that it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ

the teachings of kang with the invention of Fritsch to provide rapid and wide distribution of the content.

Applicant further argues that Fritsch does not teach the step of sending an electronic sample. Examiner respectfully disagrees. Webster's Collegiate Dictionary defines "sample" as "a representative part or a single item from a larger whole or group esp. when presented for inspection or shown as evidence of quality." Under this definition, an entire song is a sample of an album, which in turn is a sample of a musician's entire library of work, which is in turn a sample of a musical genre, which is in turn a sample of music in general. Applicant does not claim that an electronic sample of a song is sent as an email attachment. Furthermore even if this narrower limitation was added, Fritsch teaches the step of distributing an electronic sample of a song via a web site. Examiner maintains that it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the teaching of kang with the invention of Fritsch to distribute said electronic sample of a song as an email attachment.

Applicant also argues that kang requires a security code on the digital content. Examiner concedes this fact. However, the claimed invention does not preclude the use of such security codes, and kang's employment of a security code does not teach away from the claimed invention.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan Jaketic whose telephone number is (703) 308-0134. The examiner can normally be reached on Monday through Friday (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703)308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

bj

A handwritten signature in black ink, appearing to read "Brian D. Janket".